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IN RE MAXISEGAR SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
HAMID SULTAN ABU BACKER J
[ORIGINATING SUMMONS NO: D-24NCC-97-2009]
1 MARCH 2010

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COMPANY LAW: *Arrangements and reconstructions - Restraining order - Extension of, application for - Whether ought to be granted - Companies Act 1965, s. 176*

C The applicant was a housing developer who had run into financial difficulties. In consequence, they had in a previous suit sought a s. 176 Companies Act 1965 protection from court. Subsequently they obtained various extensions of that order. The applicant filed this application seeking for a further extension of time. The D applicant, *inter alia*, claimed that pursuant to the previous orders of the court: (i) the applicant had completed various projects and houses were delivered to the purchasers; (ii) the present creditors had no nexus to the previous creditors who were all paid in full; (iii) the company had ceased to be a housing developer from 2004 E but the state government had placed lot of pressure for the company to complete the projects and had been instrumental for the appointment of a white knight to complete the project; (iv) all the major creditors in principle had no objection to the application; (v) there were civil suits pending in the courts for LAD payment by F purchasers but they would have nothing to gain if the company was wound up, but if the scheme was finally approved they would be able to obtain full benefit; (vi) the previous order for 90 days was not sufficient as there were a number of intervening public holidays and in consequence all the relevant parties' meeting for an approval G could not be obtained; (vii) the final phase was to call for the purchasers' meeting to obtain their consent and if the extension was granted this could be achieved; and (viii) if the extension was not granted the purchasers would be at a loss and all the attempts by the government to revive the project would become non productive.

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Held (allowing one last extension of 90 days):

(1) The overriding consideration for granting the orders was the justice of the case and was not based solely on the strict guide lines stated in s. 176. The court should only condone an I application under s. 176 when the company has suffered a trading loss or its like. Courts must be reluctant to entertain an application where the losses have arisen because of the wrongful

misappropriation of money by the directors for the benefit of the directors or shareholders or its like of the company and the directors were attempting to mitigate the losses by using the 176 mechanism to further benefit from the creditors; as it would be against public policy to do so. Therefore, the supporting affidavit or additional affidavit must explain the reasons for the loss. (para 6)

(2) This case involved incomplete housing projects which consisted of low costs and medium cost houses. The government was committed to see its completion. The majority creditors had not objected to the application. On the previous occasions the court had granted more than 4 extensions of 180 days and the applicant had by that grace completed various projects for the benefit of the purchasers. By not granting the extension sought in this application the purchasers of the incomplete project would suffer and the litigant in the civil suit would not benefit. (para 7)

Case(s) referred to:

In Re Foursea Construction (M) Sdn Bhd [1998] 3 CLJ 135 HC ***(refd)***

In Re Lityan Holdings Bhd & Ors (Applicants) [2007] 3 CLJ 554 HC ***(refd)***

In Re Sateras Resources (Malaysia) Bhd [2005] 6 CLJ 194 HC ***(refd)***

Jin Lin Wood Industries Sdn Bhd & Ors v. Mulpha International Bhd (No 2) [2005] 7 CLJ 208 HC ***(refd)***

Kemayan Corporation Bhd & Ors v. Affin Discount Bhd & Ors [2003] 5 CLJ 422 HC ***(refd)***

Kuala Lumpur Industries Bhd & Ors, Re [1991] 3 CLJ 2867; [1991] 3 CLJ (Rep) 86 HC ***(refd)***

Metroplex Bhd & Ors v. Morgan Stanley Emerging Markets Inc & Ors; RHB Sakura Merchant Bankers Bhd & Ors (Interveners) [2005] 3 CLJ 810 HC ***(refd)***

PECD Bhd & Anor v. Merino-ODD Sdn Bhd & Ors [2009] 3 CLJ 685 HC ***(refd)***

Re Panglobal Bhd & Ors [1999] 8 CLJ 520 HC ***(refd)***

Sri Hartamas Development Sdn Bhd v. MBF Finance Bhd [1990] 1 CLJ 827; [1990] 3 CLJ (Rep) 106 HC ***(refd)***

Legislation referred to:

Companies Act 1965, ss. 176(1), (3), 10, (10A)(a), (b), (c), (d), 218, 222

For the applicant - Ricky Tan; M/s Ricky Tan & Co

Reported by Amutha Suppayah

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JUDGMENT

Hamid Sultan Abu Backer J:

[1] This is my judgment in respect of the applicant's application seeking for extension of time to extend two orders granted by this court pursuant to s. 176 of the Companies Act 1965 (CA 1965) on 2 December 2009. And the prayer *inter alia* reads as follows:

> 1. An order pursuant to section 176(1) of the Companies Act 1965 that separates meetings ("the company meetings") be convened in respect of the various classes of creditors of the Applicant (collectively, "the Scheme Creditors") defined in the Proposed Restructuring Scheme, the details of which are as set out in the Affidavit of Ramli bin Md Saled and for the purposes of considering and if though fit approving, with or without modifications, the said Proposed Restructuring Scheme proposed or to be proposed between the Applicant and the Scheme Creditors according to the Order given by this Honourable Court on 2/12/2009 be extended for hundred eighty days (180) from 3/3/2010 until 2/9/2010 to convene the meeting;
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> 2. that the restraining order ("the Restraining Order") granted pursuant to Section 176(10) of the Companies Act 1965 on 10/11/2009 which restricts all further proceedings in any action or proceeding against the Company including, without derogating from the generality of the foregoing, winding up, execution and arbitration proceedings as well as any intended of future proceedings, be extended according to Section 176(10A) Companies Act 1965 for the period of hundred eighty (180) days from 3/3/2010 until 2/9/2010.

Brief Facts

[2] The applicant is a housing developer who had run into financial difficulties. In consequence, they have in a previous suit no D5-24-99-2006 sought 176, protection from court pursuant to order dated 24 November 2006 and had obtained various extensions of that order by 180 days on the following dates namely: 24 May 2007; 12 February 2007; 20 June 2008; 12 December 2008 and 22 June 2009.

[3] Pursuant to the previous orders of the court the applicant says: (i) has completed various projects and houses were delivered to the purchasers (ii) the present creditors have no nexus to the previous creditors who were all paid in full (iii) the company has a

liability of nearly one billion ringgit but nearly RM800 million or more is expected to be written off by the holding company and associates and some others (iv) the company has ceased to be a housing developer from 2004 but the state government has placed lot of pressure for the company to complete the projects and has been instrumental for the appointment of a white knight to complete the project (v) all the major creditors in principle have no objection to the application (vi) there are civil suits pending in the courts for LAD payment by purchasers but they will have nothing to gain if the company is wound up, but if the scheme is finally approved they will be able to obtain full benefit (vii) there are also no winding up proceedings save for 218 notices (viii) the previous order for 90 days was not sufficient as there were a number of intervening public and seasonal holidays of major races and in consequence all the relevant parties' meeting for an approval could not be obtained (ix) the final phase is to call for the purchasers' meeting to obtain their consent and if the extension is granted this could be achieved (x) if the extension is not granted the purchasers will be at a loss and all the attempts by the government to revive the project will become non productive. The loss will be to the creditors as well as the purchasers and not to the company as it has ceased business (xi) this application for extension of time has been advertised in three newspapers and nobody has appeared to object (xii) the majority creditors have supported the appointment of the director as required in s. 176(10A)(d) (xiii) all the provisions of s. 176(10A)(a) to (d) has been complied with.

Jurisprudence Relating To s. 176 CA 1965

[4] Section 176 can be conveniently divided into two parts. The first part deals with a mechanism to save insolvent companies through the order of the court by giving a sum lesser to the creditors, provided the strict provisions stipulated in the section are complied with. The second part deals with restraining orders which in essence stands as a rider to the 1st part to help maintain the *status quo* until the court makes a decision relating to the 1st part. Though the 1st part is matter of judicial discretion and extension can be obtained according to the justice of the case, such flexibility is not provided in respect of the 2nd part and strict compliance is necessary failing which the court is not obliged to grant the order or extension as the case may be. The said s. 176 reads as follows:

> (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of

them the Court may, on the application in a summary way of the company or of any creditor or member of the company, or in the case of a company being wound up of the liquidator, order a meeting of the creditors or class of creditors or of the members of the company or class of members to be summoned in such manner as the Court directs.

(2) A meeting held pursuant to an order of the Court made under subsection (1) may be adjourned from time to time if the resolution for adjournment is approved by a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting.

(3) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to any compromise or arrangement the compromise or arrangement shall, if approved by order of the Court, be binding on all the creditors or class of creditors or on the members or class of members (as the case may be) and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(5) An order under subsection (3) shall have no effect until an office copy of the order is lodged with the Registrar, and upon being so lodged, the order shall take effect on and from the date of lodgment or such earlier date as the Court may determine and as may be specified in the order.

(6) Subject to subsection (7), a copy of every order made under subsection (3) shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(7) The Court may, by order, exempt a company from compliance with the requirements of subsection (6) or determine the period during which the company shall so comply.

(8) Where any such compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies has been proposed, the directors of the company shall:

(a) if a meeting of the members of the company by resolution so directs, instruct such accountants or advocates or both as are named in the resolution to report on the proposals and forward their report or reports to the directors as soon as may be; and

(b) make the report or reports available at the registered office of the company for inspection by the shareholders and creditors of the company at least seven days before the date of any meeting ordered by the Court to be summoned as provided in subsection (1).

(9) Every company which makes default in complying with subsection (6) or (8) and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Two thousand ringgit.

Power of Court to restrain proceedings.

(10) Where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between the company and its creditors or any class of those creditors, the Court may, in addition to any of its powers, on the application in a summary way of the company or of any member or creditor of the company restrain further proceedings in any action or proceeding against the company except by leave of the Court and subject to such terms as the Court imposes.

(10A) The Court may grant a restraining order under subsection (10) to a company for a period of not more than ninety days or such longer period as the Court may for good reason allow if and only if:

(a) it is satisfied that there is a proposal for a scheme of compromise or arrangement between the company and its creditors or any class of creditors representing at least one-half in value of all the creditors;

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(b) the restraining order is necessary to enable the company and its creditors to formalise the scheme of compromise or arrangement for the approval of the creditors or members pursuant to subsection (1);

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(c) a statement in the prescribed form as to the affairs of the company made up to a date not more than three days before the application is lodged together with the application; and

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(d) it approves the person nominated by a majority of the creditors in the application by the company under subsection (10) to act as a director or if that person is not already a director, notwithstanding the provisions of this Act or the memorandum and articles of the company, appoints the person to act as a director.

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(10B) The person approved or appointed by the Court to act as a director of the company under subsection (l0A) shall have a right of access at all reasonable times to the accounting and other records (including registers) of the company, and is entitled to require from any officer of the company such information and explanation as he may require for the purposes of his duty.

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(10C) Any disposition of the property of the company, including things in action and any acquisition of property by the company, other than those made in the ordinary course of business, made after the grant of the restraining order by the Court shall, unless the Court otherwise orders, be void.

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(10D) Where a company disposes or acquires any property, other than in the ordinary course of its business, without leave of the Court, every officer of the company who is in default shall be guilty of an offence against this Act.

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Penalty: Imprisonment for five years or one million ringgit or both.

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(10F) Where an order is made under subsection (10), every company in relation to which the order is made shall, within seven days:

(a) lodge an office copy of the order with the Registrar; and

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(b) publish a notice of the order in a daily newspaper circulating generally throughout Malaysia,

and every company which makes default in complying with this subsection and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: One hundred thousand ringgit.

(10F) An order made by the Court under subsection (10) shall not have the effect of restraining further proceedings in any action or proceeding against any person other than the company that had applied for the restraining order.

(10G) For the purpose of subsection (10F), the term "any person" includes a guarantor of the company.

[5] There are number of cases which had dealt with the parameters of s. 176 and some of them are as follows:

(a) In *Kuala Lumpur Industries Bhd & Ors, Re* [1991] 3 CLJ 2867; [1991] 3 CLJ (Rep) 86, VC George J (as he then was) had this to say namely: (i) For there to be a proposal within the meaning of s. 176, it is not necessary that there should be a scheme in a complete form capable of being presented to the creditors for being voted on; (ii) Where there is such a proposal, and even before it is put to anybody, the company or any member or creditor of the company may move the court for a restraining order pursuant to s. 176(10). The policy of the section is not such that a s. 176(10) application has to be tagged on to a s. 176(1) application. The two may be brought independent of the other; (iii) When considering a s. 176(10) application, the court must have before it a proposal of a scheme of compromise or arrangement not necessarily ready for presenting to the creditors to be voted upon but with sufficient particulars to enable the court to assess that it is feasible and merits due consideration by the creditors when it is eventually placed before them in detailed form. The court also has to be satisfied that there is a *bona fide* application under s. 176(1); (iv) The complaint that the intention of the applicant in taking out the application was to forestall the winding up of a hopelessly insolvent company does not take the matter anywhere since the whole point of s. 176 is to provide a statutory remedy to sort out the problems of ailing companies without letting them go under.

(b) In *Sri Hartamas Development Sdn Bhd v. MBF Finance Bhd* [1990] 1 CLJ 827; [1990] 3 CLJ (Rep) 106, Siti Norma Yakob J (as her lady then was) had this to say namely: (i) The applicant, at the summary stage need only establish that the court has the necessary jurisdiction to entertain such an application, and not having ascertained this, the court must then decide whether the scheme is cast in terms, such that, it achieves the 3/4 majority of all the creditors attending and voting at the creditors meeting under s. 176(3); (ii) Despite the objection of a creditor, the majority of creditors may vote for the scheme and the court would be most reluctant, at the subsequent application for sanction, to hold the scheme as unreasonable; (iii) The court should only overrule the decision of the majority if there had been some material oversight or miscarriage on their part; (iv) The court must be vigilant, at the summary stage, to ensure that all requirements of s. 176(1) of the Companies Act are met.

(c) *In Re Lityan Holdings Bhd & Ors (Applicants)* [2007] 3 CLJ 554, Kang Hwee Gee J (as he then was) had this to say namely: (i) A restraining order could not be made under s. 176(10) of the Companies Act 1965 based merely on facts stated in the supporting affidavit of the plaintiffs; (ii) The granting of a restraining order is a serious matter that involves the interest of shareholders and creditors of the company; (iii) Firstly, before a restraining order can be granted under s. 176(10) there must be in place a proposed "compromise or arrangement between the plaintiff and its creditors, or any class of them or between the company and its members or any class of them"; (iv) Secondly, the company must be able to present a viable proposal for the consideration of the court supported by views of experts.

(d) In *Kemayan Corporation Bhd & Ors v. Affin Discount Bhd & Ors* [2003] 5 CLJ 422, Kang Hwee Gee J (as he then was) held that:

> It followed that both the order to convene the meeting under s. 176(1) of the Act and the restraining order under s. 176(10) of the Act were good only for the original purpose for which they were granted based on the proposed compromise or arrangement which was put before the court then. Therefore, it was an abuse of the process of the court bordering on contempt for the applicants to apply for extension of the orders when the proposed arrangement or compromise had failed. If they were desirous of entering into a new arrangement or

compromise as they were now attempting to do, it would be incumbent upon the applicants to submit a new proposal to the court setting out the viability of the scheme which they had in mind for its consideration. Even assuming that s. 176 of the Act does allow the applicants to apply for an extension of the meeting of creditors or shareholders notwithstanding that the proposed compromise or arrangement had fallen through, there was hardly any reason to allow any further extension in this case as the applicants had failed to reach any arrangement or compromise after some four years. To allow the extension would tantamount to providing unlimited protection to the applicants contrary to the purport of s. 176 of the Act to the prejudice of its own shareholders and its creditors.

(e) *In Re Foursea Construction (M) Sdn Bhd* [1998] 3 CLJ 135, KL Rekhraj J had this to say (i) An application under s. 176(1) of the CA must be dealt with summarily, ie, by hearing *inter partes*, with an opportunity given to the known creditors to make their representation. Such an application must not be proceeded *ex parte* as it will be a great injustice to the creditors who are legally entitled to enforce execution proceedings; (ii) Section 176(1) of the CA gives the court a discretion only if there are no winding-up proceedings initiated prior to the application; if there already are winding-up proceedings, then the application must be made in the very winding-up proceedings by making the petitioners and the supporting creditors, if any, as parties thereto; (iii) A stay may be granted under s. 222 of the CA if the court (in the winding-up proceedings) is satisfied that an arrangement can be reached after considering the wishes of all the creditors. On the other hand, if the court is satisfied that the company's financial position is one which is "hopelessly insolvent", then the application should be refused. It will be against the interest of the commercial world and morality to permit further trading losses which may never be discharged.

(f) *Re Panglobal Bhd & Ors* [1999] 8 CLJ 520, Abdul Aziz Mohamad J (as he then was) had this to say (i) Only further proceedings in a pending action or proceeding may be restrained under s. 176(10) of the Companies Act 1965; (ii) The application ought to be served on the creditors whose actions or proceedings are sought to be restrained, so that they may have an opportunity to oppose the application for the restraining order.

(g) In *Jin Lin Wood Industries Sdn Bhd & Ors v. Mulpha International Bhd (No 2)* [2005] 7 CLJ 208, Abdul Wahab Said J held as follows:

> [1] The applicants were actively getting feedback from the scheme creditors in order that the scheme could be prepared and completed by taking into consideration all the views and suggestions of the scheme creditors and if need be, make amendments to the scheme before it was formally presented in the meetings. Failure to take into consideration the views to the scheme creditors and members would result in more postponements. This would not be in the best interest of the parties. The extension was necessary in order that the scheme could be carried through. Further, the extension would not be unduly prejudicial to Mulpha or any non-scheme creditors.
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> [2] The restraining order needed to be extended so that the scheme would not be defeated by the filing of legal suits. If legal suits were to get in the way, all the effort, preliminary discussions and liaising with the relevant authorities to fulfil all the legal requirements would come to naught. As far as the authorities were concerned, the Securities Commission had asked for and had obtained information regarding the restructuring. The Ministry of International Trade and Industry (MITI) had said that in principle, they had no objections to the scheme.
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> [3] The mere exclusion of a certain creditor does not open the applicants to imputations of *mala fides* and abuse of process. Under s. 176(1), the applicants have the discretion not to compromise with all creditors and the rights of the remaining creditors are merely stayed. Further, there was no reason to worry about being left out in the cold as there were sufficient safeguards under the provisions of the Companies Act 1965, for instance ss. 176(10B), (10C), (10D), (10F) and (10G) that provide stringent penalties for violators.

(h) In *Metroplex Bhd & Ors v. Morgan Stanley Emerging Markets Inc & Ors; RHB Sakura Merchant Bankers Bhd & Ors (Interveners)* [2005] 3 CLJ 810, Vincent Ng J held as follows: (i) s. 176(10A) of the Act not only provides that a restraining order may only be granted if there is a proposal for a scheme of compromise which involves creditors representing at least one-half in value of all the creditors, but it also stipulates that a restraining order may only be extended for a longer period "if and only if" there is a "good reason" to do so; (ii) The words "good reason" have been construed by the courts to mean that:

(a) a *bona fide* scheme of arrangement is presented, with sufficient details provided to the creditors to enable them to make informed decisions as to its feasibility and merits; (b) the scheme of arrangement presented must not be such that it is bound to fail; and (c) the interest of the creditors, that is, the beneficiaries under the proposed arrangement is safeguarded; (iii) Obviously, premised on the above requirements, the applicant's submission that this was the last extension of restraining order requested and that it was only for a period of four months from 22 October 2004 (or only about three months from 30 November 2004 to 21 February 2005) could not *per se* constitute "good reason"; (iv) Surely, the existence of "good reason" ought to be predicated upon the applicants' *bona fide* conduct towards achieving a feasible detailed scheme of arrangement for presentation to the general body of creditors. It was not feasible if, for example, the scheme to be presented was bound to fail.

(i) *In Re Sateras Resources (Malaysia) Bhd* [2005] 6 CLJ 194, Ramly Ali J (as he then was) had this to say: (i) Generally, the court should be slow in interfering with the decision of the majority of the creditors in the creditors meeting. (ii) Businessmen are much better judges of what is to their commercial advantage rather than the court. However, the court may interfere if there is anything wrong or there has been some material oversight or miscarriage on their part.

(j) In *PECD Bhd & Anor v. Merino-ODD Sdn Bhd & Ors* [2009] 3 CLJ 685, Azahar Mohamed J had this to say (i) Both s. 176(1) and s. 176(10) require the applications to be dealt with in a summary way which means the applications are dealt by way of *ex parte* before a judge in chambers; (ii) It is essential that there must be a frank and fair disclosure of all relevant materials including points that may be unfavorable to the applicant, so that if the relief is granted, it would rightly be granted; (iii) The court will require strict compliance of this requirement.

[6] The reading of the above cases will show that the criteria for granting the orders are not based on uniform principles or parameters. However the overriding consideration appears to be the justice of the case and is not based solely on the strict guide lines

stated in the said section. In addition I will say the court should only condone an application under s. 176 when the company has suffered a trading loss or it's like. Courts must be reluctant to entertain an application where the losses have arisen because of the wrongful misappropriation of money by the directors for the benefit of the directors or shareholders or it's like of the company and the directors are attempting to mitigate the losses by using the 176 mechanism to further benefit from the creditors; as it will be against public policy to do so. To ascertain this, the supporting affidavit or additional affidavit must explain the reasons for the loss. There is a duty to disclose to the court why the losses occurred to ensure that court does not give a lending hand to directors who have misappropriated funds of the creditors or where the company has not suffered a genuine trading loss or its like.

[7] I have read the application, affidavits and submission of the applicant in detail. After giving much consideration and referring to various authorities and readings in this subject, I take the view that at least one last extension of 90 days must be allowed. My reasons *inter alia* are as follows:

(i) It is trite that housing developers receive the purchase price from purchasers subject to a promise to deliver the house. And that promise in law is no ordinary promise and it can be equated to a trust taking into consideration the vulnerable position of purchasers. In the instant case, *prima facie* the company ought to have completed the projects according to schedule or they will be in breach of contract as well as breach of trust to the purchasers of incomplete projects and/or they may even be liable for criminal breach of trust and/or other penal offences. It is for the purchasers to lodge a police complaint and for the Attorney General Chambers to consider prosecuting the directors inclusive of past directors to arrest this wide spread vice faced by the country due to irresponsible developers such as the applicant who may have directly or indirectly made many purchasers insolvent or short change their hard earned money because of the incomplete projects. That does not mean that the law does not permit Attorney General Chambers to consider this judgment as a complaint and direct investigation against recalcitrant developers for the public benefit. Abandoned housing projects as well as commercial projects are not only eye sore but it may affect the image and

administration of the country in the right perspective more so when at times foreign purchasers are also involved in some of the major projects where the government is doing everything possible to attract foreign investors. The recalcitrant conduct of some developers must not be allowed to affect the image and administration of the country. Public media have often highlighted the plight of the purchasers but no effective law has been formulated yet to eradicate this vice and make it safe for purchasers to purchase property from licensed developers. This is a sad state of affairs, and parliament need to provide the appropriate solution and remedy as shelter in the form of a house (like food) is a necessity to the public and many innocent purchasers have been victims of housing developers. Anarchy caused by housing developers must be dealt with harshly and the law at least in the first instance must be amended to make sure *inter alia* the directors are personally liable to refund money to the purchasers in the event the project is not completed. This is how the banks operate by way of director's guarantee in lending transactions. There is no reason why such imposition cannot be made to control this vice in housing transactions. It is time the Attorney General Chambers wakes up to the crying calls of purchasers and diligently performs the constitutional duty and obligation to safe guard public interest and arrest the vice; when it is patent that millions or billions may have been in crude terms swindled by developers of incomplete projects at the expense of innocent purchasers. The plight of purchasers must be given utmost priority in prosecuting compared to vast interest shown and public funds spend to prosecute petty offences and alike. Losses perpetrated by housing developers does not only cause loss to the purchasers but also to the public when the government revives the abandoned projects through the use of public funds and sadly that too without any form of punishment to the perpetrators for the loss.

As a general rule the court ought not to lend any credence to affidavits of directors and/or employees of company who have taken money from purchasers and have not completed the project unless the company can satisfy the court it was a genuine trading loss or it's like. The provision of 176 is not meant to assist companies who have siphoned purchasers or creditor's money or it's like and attempts to mitigate the wrong

A doings by way of 176 application to come out with clean slate. Section 176 is meant to consider matters relating to genuine trading loss or its like and not to assist fraud or its like committed by directors who sought to hide behind the skirt of a judicial order. In the instant case I am compelled to make an
B exception notwithstanding the applicant has not set out in detail the reasons for the loss; this is so because of the wider interest of the purchasers of the incomplete project and the fact that the government is committed to complete the project and there is a commitment of a white knight ready and willing to see the
C completion of the projects.

(ii) The case involves incomplete housing projects which consist of low costs and medium cost houses. The record shows the government is committed to see its completion. The majority
D creditors have not come to the court to object to the application. In addition none of the solicitors in the pending civil action has appeared before the court to object to the application notwithstanding as an additional precaution, I have ordered the hearing date to be advertised and it has been
E advertised in three newspapers.

(iii) The record shows the court in previous occasions have granted more than four extensions of 180 days and the applicant has by that grace completed various projects for the benefit of the
F purchasers. By not granting the extension sought in this application the purchasers of the incomplete project will suffer and in addition the litigant in the civil suit will not benefit.

(iv) In the instant case much consideration need to be given to the purchasers of the incomplete projects and the fact that the
G government is committed to see its completion. On the special facts of the case a further extension of 90 days will not be unreasonable with some directions, as I am satisfied the applicant has satisfied the rudimentary requirements set out in s. 176.

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[8] For reasons stated above the applicant's application is allowed but the extension is restricted to 90 days from the date of expiry of the previous order dated 2 December 2009 with the following directions:

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(i) No further extension will be granted by this court;

(ii) If the applicant is not satisfied with this order it must immediately appeal to the Court of Appeal as the extension of 180 days *per se* has been rejected;

(iii) The order of this court must be advertised in English, Chinese and Tamil newspaper at least once within two weeks from the date of this order.